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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,905	04/21/2006	Raphael Belaubre	BDL-73	7431
20311	7590	07/01/2008	EXAMINER	
LUCAS & MERCANTI, LLP			DEFRANK, JOSEPH S	
475 PARK AVENUE SOUTH				
15TH FLOOR			ART UNIT	PAPER NUMBER
NEW YORK, NY 10016			3724	
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			07/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/576,905	BELAUBRE, RAPHAEL
	Examiner	Art Unit
	JOSEPH DEFRANK	3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 March 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 12 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 12, 14, 15 and 17-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This action is in response to the amendment filed on 3-25-08. Claims 12, 14, 15, and 17-22 are pending.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract should not use the term "comprising" is legal phraseology.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 12, 14, 15, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Keppel et al. (US Patent 5,937,523 as cited in IDS) in view of DiMatteo et al. (US PGPub 2001/0005941; as previously cited).

6. With respect to claim 12, Van Keppel et al. discloses a cigar-cutter device comprising a pair of blades (30), said blades being superposed, and each blade being movable in pivoting about an axis (where pin 16 resides) and including handle (32) and

drive means (arm 14) and a sharp edge (blades 30), said sharp edge presenting an inside face co-operating in a cutting plane with the inside face of the cutting edge of the other blade, said device further comprising means for connecting together said two superposed blades (pin 16, as well as lock setup of figure 6), comprising at least one connection element (16) located at said pivot axis, at least one plate (18) including an orifice (26) that is symmetrical about a middle axis and that is preferably circular, being suitable for receiving a cigar, said plate being secured to the two blades (30) at least via their said pivot axis (or axes), and said plate being disposed against the outside face of one of said blades (see figure 4); wherein said sharp edge presenting respective leading profiles that are concave and symmetrical to each other about said middle axis (best shown in figure 3) , said profiles preferably being substantially semicircular; and wherein the device further comprises mechanical coupling means for coupling pivoting of the two blades about their said respective pivot axes (pin 16). Van Keppel et al. does not disclose said mechanical coupling means comprising at least two toothed portions directly secured respectively to each of said blades, and co-operating by meshing in such a manner as to enable said blades to move simultaneously and symmetrically about said middle axis.

DiMatteo et al. discloses a pair of gardening shears where the handles each have their own pivot axes (60 and 62) and are coupled by two, convex meshing, identical toothed gears (34 and 36) which mesh in such a manner as to enable the handles to move simultaneously and symmetrically about a middle axis. DiMatteo et al. discloses the advantage of such a geared setup is that the cutting load is shared

between the two handles (paragraph 26). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the arms (14), and thus the blades (30), of Van Keppel et al. to be on offset axes and meshed with two gears in order to evenly distribute the load encountered while cutting a cigar between the two lever arms in view of the teachings of DiMatteo et al. Examiner notes that the gears are directly mounted on the blades (as disclosed by DiMatteo et al.), but not integral with the blades. There are no parts in between the gear assembly and the blade units, and thus they are directly mounted on the blades.

7. With respect to claims 13 and 14, Van Keppel et al. discloses the device having two of said plates (18) placed respectively against each of said outside faces of each of said blades, said two orifices being identical and place in register with each other.

8. With respect to claim 15, the cigar cutter having a gear transmission of Van Keppel et al. in view of DiMatteo et al. discloses the toothed portion of the gears (34 and 36 of DiMatteo et al.) inscribed in a circular envelope centered on said pivot axes (60 and 62 of DiMatteo et al.) of said blades (30 of Van Keppel et al.).

9. With respect to claims 19 and 20, Van Keppel et al. discloses the cigar cutter having a torsion spring (42) between the two blades (30). Van Keppel et al. also disclose the cigar cutter having a locking mechanism (shown in figure 6) designed to keep the two blades in a closed-together position when the cutter is not in use.

10. With respect to claim 21, Van Keppel et al. discloses the cigar cutter including abutment guide means enabling the relative displacement of each blade to be limited, preferably comprising at least one slider (44) suitable for moving in at least one

slideway (36) that is preferably circular, said slider being secured to at least one of said blades or said plate, and said slideway being provided in the other one of said blades or where appropriate in said plate. The slider (44) is also the locking mechanism and is secured in place by the hole (44a) in the plate. The user cannot push the blades further together than after the slider (44) hits the end wall of the slideway (36) of each blade.

11. With respect to claim 22, the device of Van Keppel et al. in view of DiMatteo et al. is not only capable of, but is intended to cut a cigar by inserting it between the two blades (30 of Van Keppel et al.) through the orifice (26 of Van Keppel et al.), pivoting the blades towards each other by imparting said simultaneous and symmetrical relative displacement (through the gear transmission of DiMatteo et al.) so as to cut the cigar. The user does this with the help of the drive means (handles 32 on arm 14 of Van Keppel et al.).

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Keppel et al. (US Patent 5,937,523 as cited in IDS) in view of DiMatteo et al. (US PGPub 2001/0005941, as previously cited) as applied to claim 12 above, and further in view of Eiichi et al. (JP H11-018745 A, as previously cited).

Van Keppel et al. in view of DiMatteo et al. discloses the cigar cutter wherein said sharp edge of said blade (30 of Van Keppel et al.) is situated between said pivot axis and said drive means (handle 32 on arm 14 of Van Keppel et al.) thereof, but does not disclose the handle including an orifice suitable for receiving at least one digit. Examiner notes that handles that allow the user to insert a finger to assist in holding the device while cutting are extremely well known in the cutting arts. Eiichi et al. discloses a

cigar cutter with each handle (6) having a hole opening for the user's fingers (4a and 4b). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. In this case, adding a loop to the handle gives the user a better grip on the cigar cutting device. Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made modify the handle (32) of Van Keppel et al. in view of DiMatteo et al. in order to loop around and provide an orifice for the user to insert a finger during the use of the cutter in view of the teachings of Eiichi et al.

Response to Arguments

13. Applicant's arguments filed with respect to claim 12 have been fully considered but they are not persuasive. The applicant argues that the art of DiMatteo et al. does not disclose the gear units directly secured on the blades, and thus the term "directly" was added to the claim. Examiner notes that directly does not mean integral with. It is true that the gear units of DiMatteo et al. are actually part of the handle portion of the cutter, but they are indeed secured directly to the cutting blades. There is no secondary piece between the gears and the blades. Thus, the art of DiMatteo et al. is still relevant to the claim language presented.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH DEFRAK whose telephone number is (571)270-3512. The examiner can normally be reached on Monday - Thursday; 9am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Prone/
Primary Examiner, Art Unit 3724

Joseph De Frank
Examiner
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JD
6-25-08
/J. D./
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